INITIAL REGULATORY FLEXIBILITY ANALYSIS

1 Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure such proposals are given serious consideration. The RFA does not contain any decision criteria; instead the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of various alternatives contained in the FMP or amendment (including framework management measures and other regulatory actions) and to ensure the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

With certain exceptions, the RFA requires agencies to conduct an initial regulatory flexibility analysis (IRFA) for each proposed rule. The IRFA is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. An IRFA is conducted to primarily determine whether the proposed action would have a "significant economic impact on a substantial number of small entities." In addition to analyses conducted for the RIR, the IRFA provides: 1) A description of the reasons why action by the agency is being considered; 2) a succinct statement of the objectives of, and legal basis for, the proposed rule; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; 4) a description of the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; and, 5) an identification, to the extent practicable, of all relevant federal rules, which may duplicate, overlap, or conflict with the proposed rule.

2 Statement of the need for, objectives of, and legal basis for the rule

A discussion of the need for and objectives of this action is provided in Section 1.2 of this document. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

3 Description and estimate of the number of small entities to which the proposed action would apply

This proposed action would apply to commercial vessels that harvest octocorals in Federal waters, harvest snapper grouper in Federal waters throughout the South Atlantic, or harvest snapper grouper or coastal migratory pelagic (CMP) species in South Carolina Special Management Zones (SMZs). A Federal permit is required to harvest octocorals and snapper grouper in Federal waters. There are two types of Federal commercial snapper grouper permit, an unlimited permit, which is transferable and allows the harvest of unlimited quantities of snapper grouper species, unless constrained by single species trip limits, and a limited permit, which is not transferable and limits vessels to 225 lbs of snapper grouper per trip. For the

species included in the CMP fishery, a Federal permit is required to harvest commercial quantities of king mackerel and Spanish mackerel (separate permits for each species).

No entities have the Federal permit required to harvest octocorals in Federal waters.

On March 29, 2011, there were 598 non-expired or renewable unlimited snapper grouper commercial permits and 138 limited snapper grouper permits, or a total of 736 snapper grouper commercial permits. Although unlimited permits are transferable, potentially resulting in more vessels operating in the fishery than the number of permits, the number of permits is assumed to represent the number of full-time equivalent vessels operating in the fishery. As a result, the number of permits is assumed equivalent to the number of vessels and the vessel is assumed to be the representative unit for an entity.

Similar information is not available for permits associated with vessels with home ports in South Carolina. However, over the period 2005-2009, the average annual number of vessels with home ports in South Carolina that possessed the appropriate Federal commercial permit was 38 vessels for king mackerel, 15 vessels for Spanish mackerel, and 72 vessels for snapper grouper (unlimited and limited permits combined). Additional vessels from other states may also harvest finfish in the South Carolina SMZs and may be affected by the proposed action but, for the purpose of this analysis, the majority of vessels that fish in the South Carolina SMZs are assumed to come from South Carolina ports.

For the period 2005-2009, the total average annual ex-vessel revenues from all snapper grouper harvests was approximately $13.8 million (2009 dollars), or approximately $16,000 per vessel (averaged over 847 vessels, which was the average annual number of vessels with snapper grouper permits over this period; if averaged over the current number of permits, 736, based on the assumption that average annual revenues have been maintained despite declining participation in the fishery, the average per vessel increases to approximately $19,000). These totals do not include revenues from other species harvested by these vessels, but snapper grouper are assumed to be the primary species harvested by these vessels. Although more recent data is not available, over the period 2003-2007, snapper grouper accounted for approximately 61 percent of total revenues by vessels with snapper grouper harvests. If this percentage is used to adjust the per-vessel averages of snapper grouper revenues provided above to account for revenues from other species, the resultant averages increase to approximately $26,000 (847 vessels) and $31,000 (736 vessels).

Revenue information for vessels that fish in the South Atlantic SMZs is unknown. However, for the period 2005-2009, the total average annual ex-vessel revenues from all snapper grouper harvests landed in South Carolina was approximately $3.6 million (2009 dollars), or approximately $50,000 per vessel (averaged over 72 vessels). Similar to the information on snapper grouper harvests for the entire South Atlantic, these totals do not include revenues from other species harvested by these vessels, but snapper grouper are assumed to be the primary species harvested by these vessels. If the average revenue per vessel is adjusted to account for revenues from other species using the percentage used in the previous paragraph (61 percent), then the average ex-vessel revenue per vessel would increase to approximately $82,000.

Similar information for South Carolina vessels harvesting CMP species is not available. However, for the entire South Atlantic, over approximately the same period (2004-2009; the king mackerel and Spanish mackerel fishing years do not follow the calendar year, so the data covered the fishing years 2004-2005 through 2008-2009, thereby encompassing part of 2004 and only part of 2009), the total average annual ex-vessel revenues from all species for vessels harvesting king mackerel was approximately $23.3 million (2009 dollars), or approximately $32,000 per vessel, while the total average annual ex-vessel value was approximately $9.7 million (2009 dollars), or approximately $28,000 per vessel, for vessels harvesting Spanish mackerel. Unlike in the snapper grouper fishery, in which snapper grouper are the primary species harvested by fishermen who harvest snapper grouper, fishermen who harvest king mackerel or Spanish mackerel derived, on average during the years examined, less than 20 percent of their total fishing revenues from king mackerel or Spanish mackerel.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. Based on the average revenue estimates provided above, all commercial vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

4 Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records

This proposed rule would not establish any new reporting, record-keeping, or other compliance requirements.

5 Identification of all relevant federal rules, which may duplicate, overlap or conflict with the proposed rule

No duplicative, overlapping, or conflicting federal rules have been identified.

6 Significance of economic impacts on small entities

<u>Substantial number criterion</u>

This proposed rule, if implemented, would apply to all vessels with Federal commercial snapper grouper permits that fish anywhere in the South Atlantic, and all vessels with Federal snapper grouper, king mackerel, or Spanish mackerel permits that fish in the South Carolina SMZs. Any expected direct effects on vessels with snapper grouper permits that do not fish in the South Carolina SMZs would be limited to the effects of the proposed regulations that would modify the protected species release gear requirements, maintaining current requirements for vessels with more than four feet freeboard height and lessening the requirements for vessels with freeboard height of four feet or less, thereby effectively only changing the requirements for vessels with

lower freeboard height. The number of vessels with Federal snapper grouper permits with freeboard height of four feet or less is unknown. Nevertheless, this component of the proposed rule would allow voluntary change, rather than mandate specific change, and no explicit burden would be imposed on any entity. As a result, because of the voluntary nature of the regulation, a substantial number of entities would not be expected to be affected by this component of the proposed rule.

This proposed rule, if implemented, would be expected to most likely directly affect only those entities with the required Federal permit for snapper grouper or CMP species that commercially fish in the South Carolina SMZs. The majority of such entities are assumed to be entities who own vessels with home ports in South Carolina, though vessels with home ports in other states may also be affected if they fish in the South Carolina SMZs. The number of potentially affected South Carolina vessels is estimated to be 38 vessels with a king mackerel permit, 15 vessels with a Spanish mackerel permit, and 72 vessels with a snapper grouper permit. Although these totals encompass all appropriately permitted vessels with home ports in South Carolina, these totals represent less than three percent of the vessels with home ports in the South Atlantic states (all of Florida, Georgia, South Carolina, and North Carolina) with king mackerel commercial permits, less than one percent of the vessels with Spanish mackerel commercial permits, and less than nine percent of the vessels with snapper grouper permits. The total number of king mackerel and Spanish mackerel vessels with home ports in Florida included vessels in both the Gulf of Mexico and South Atlantic regions. Assuming half of the Florida king mackerel and Spanish mackerel vessels are from home ports in the Gulf of Mexico region and are excluded from the total to produce a more representative South Atlantic total, the number of affected vessels still encompasses only approximately four percent of South Atlantic vessels with king mackerel permits and less than two percent of South Atlantic vessels with Spanish mackerel permits. The number of affected vessels would also decline if not all South Carolina snapper grouper or CMP vessels fish in the SMZs, which is expected to be the case because of congestion issues and the belief that the problem of the harvest of commercial quantities of fish in the SMZs is largely limited to vessels using spear gear (hand spear or spear guns), which is not the dominant gear used by vessels in the snapper grouper fishery. As a result, only a small number of vessels in the appropriate fleets would be expected to be directly affected by this proposed rule.

Significant economic impacts

The outcome of "significant economic impact" can be ascertained by examining two factors: disproportionality and profitability.

> Disproportionality: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?

All entities expected to be directly affected by the measures in this proposed rule are determined for the purpose of this analysis to be small business entities, so the issue of disproportionality does not arise in the present case.

> Profitability: Do the regulations significantly reduce profits for a substantial number of small entities?

Because no fishermen possess the required Federal permit needed to harvest octocorals in the EEZ and there are no recorded octocoral harvests from the EEZ off Georgia, South Carolina, or North Carolina, the proposed regulations pertaining to octocoral would not be expected to have any economic affect on any small entities.

It is not possible with available data to determine the amount or value of commercial harvests in excess of the recreational bag limits that would be affected by the proposed regulation. As a result, it is not possible to determine if the proposed regulation would be expected to significantly reduce profits for any small entities. Due to the inability to determine the number of vessels that would be affected by this component of the proposed rule, though the discussion above suggests the number of affected vessels may not be substantial, or the magnitude of expected effects, public comment is solicited on the potential number of affected entities and magnitude of economic effects.

The proposed release gear requirements equate to status quo conditions for vessels in the snapper grouper fishery with more than four feet of freeboard height and a lessening of the requirements for vessels with four feet or less freeboard height. Because all vessels in the snapper grouper fishery are assumed to meet current requirements, no vessel would be compelled to make any new gear purchases. Any change in gear costs would be voluntary, e.g., the replacement of current usable gear, or represent a cost reduction, as in the case of replacement of broken, worn out, or lost gear with cheaper gear meeting the specifications of the reduced requirements. As a result, the proposed release gear requirements would not be expected to significantly reduce profits for any small entities.

7 Description of significant alternatives to the proposed action and discussion of how the alternatives attempt to minimize economic impacts on small entities

The only action in this proposed rule, if implemented, that may be expected to have a significant direct adverse economic effect on the profits of any small entities is the proposed limitations on harvest of snapper grouper and CMP species in South Carolina SMZs to the recreational bag limit. Two alternatives to the proposed limitations were considered. The first alternative, the no action alternative, would not have placed any new restrictions on commercial harvests in the SMZs and, as a result, would be expected to reduce the economic impacts on small business entities. This alternative would not, however, achieve the Council's objectives of reducing user conflict, improving recreational fishing opportunities, allowing for equitable utilization by a larger number of fishermen, and protecting the reef communities from overly-efficient fishing practices.

The second alternative to the proposed action would have simply prohibited the use of spearfishing gear (hand spears and spear guns) in the South Carolina SMZs. While this alternative, if implemented, would reduce the expected economic effects on commercial vessels that use hand line or rod and reel, the economic effects on vessels that use spearfishing gear would be expected to increase. This alternative would exclude an entire gear sector, affecting both commercial and recreational anglers who use this gear. As a result, while this alternative would be expected to reduce user conflict by reducing fishing pressure, might improve recreational fishing opportunities for hook-and-line anglers, and would be expected to protect the

reef communities from efficient gear, it would not achieve the Council's objectives of equitable utilization of the resources by a larger number of fishermen.